

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

In the Matters of:

**JUAN C.,**

Claimant,

vs.

**EASTERN LOS ANGELES REGIONAL  
CENTER,**

Service Agency.

OAH Case Nos. L 2006070496 &  
L 2006070859

**DECISION ON CLAIMANT'S  
APPEALS**

These matters were heard together by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, at the Eastern Los Angeles Regional Center, in Alhambra, California, on September 6, 2006.

Claimant was represented by his mother,<sup>1</sup> who was assisted by a Spanish interpreter. Noriko Ikoma, Supervisor, represented the Eastern Los Angeles Regional Center (Service Agency or ELARC).

The parties presented testimonial and documentary evidence, and gave closing arguments. The record was closed and the matter submitted on September 6, 2006.

**ISSUES**

1. May the Service Agency reduce the respite service provided to Claimant's mother from 50 hours to 24 hours per month? (Case No. L2006070496)
2. Is Claimant's mother entitled to reimbursement from the Service Agency for the cost of emergency respite for 15 days in June and July 2006? (Case No. L2006070859)

**EVIDENCE RELIED UPON**

Documentary: Service Agency exhibits 1-24 and 31-45; Claimant exhibits A-J.

Testimonial: Claimant's mother; Noriko Ikoma, ELARC Supervisor.

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<sup>1</sup> Claimant and his family are referenced in a manner intended to protect their privacy.

## FACTUAL FINDINGS

### *Parties & Jurisdiction*

1. Claimant is a nine-year-old boy who is an ELARC consumer on the basis of his diagnosis of autism.

2. With regard to case number L2006070496, the Service Agency issued a Notice of Proposed Action, dated May 31, 2006, in which it proposed to reduce the respite service provided to Claimant's mother from 50 hours to 24 hours per month.

3. With regard to case number L2006070859, Claimant's mother, on June 27, 2006, submitted a written request by facsimile that the Service Agency provide her with 15 days of emergency respite in June and July 2006 due to a medical problem.<sup>2</sup> The Service Agency denied her request, by a Notice of Proposed Action dated July 17, 2006.<sup>3</sup>

4. Claimant's mother submitted a Fair Hearing Request dated July 12, 2006, appealing the Service Agency's proposed reduction of respite (Case No. L2006070496), and a Fair Hearing Request dated July 25, 2006, appealing the Service Agency's denial of her request for emergency respite (Case No. L2006070859).

5. The Service Agency continued providing funding for Claimant's mother to receive 50 hours per month of respite while this matter was pending. Because the hearing occurred after the dates of the requested emergency respite, Claimant's mother converted her request to reimbursement of the costs she has already incurred.

### *Facts Related to the Monthly Amount of In-Home Respite for Claimant's Mother*

6. Claimant is an only child who lives with his single mother. Claimant's mother receives no help or financial support from Claimant's father. She describes herself as a "professional mother," meaning she devotes herself entirely to her son.

7. Claimant engages in inappropriate behaviors, including tantrums and self-injurious acts. He is not yet consistently toilet-trained, has few self-help skills and requires constant supervision. Claimant is mainstreamed in regular classes at school. He attends school Monday through Friday, from 8:00 a.m. to 2:20 p.m.

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<sup>2</sup> The Service Agency believed the request was for five days emergency respite instead of 15 because part of the left margin of the request it received was cut off, which made the "15" look like "5."

<sup>3</sup> The Service Agency issued an addendum to the Notice of Proposed Action (NOPA) dated July 17, 2006, to correct a typographical error on the initial NOPA.

8. The Service Agency previously assessed Claimant's mother as needing 24 hours per month for respite, and began providing her funding for that service on a date not established.

9. Claimant's mother was subsequently diagnosed with cancer. She was hospitalized and received treatment for this condition in 2004, including surgery and prolonged chemotherapy.

10. As a result of her illness, the Service Agency gradually increased the amount of respite for Claimant's mother from 24 hours to 50 hours per month, based upon recommendations for such increases by ELARC staff physician, Dr. Lau. Some of the additional time was approved because Claimant's mother was also receiving treatment for depression due to her cancer and the constant demands of caring for her autistic son.

11. The amount of monthly respite for Claimant's mother was the issue of a prior Fair Hearing, in case number L2005050203, heard in July 2005 by ALJ Mark Harman. In the Decision of that matter, ALJ Harman ordered ELARC to continue funding the monthly respite at the amount of 50 hours per month, based upon findings that her medical condition was still in flux at the time and that her other parenting needs had not diminished.

12. Her cancer is currently in remission. Claimant's mother is no longer under active medical care for that illness, other than general check-ups every three months and yearly radiological screens.

13. Claimant's mother has consistently attended cancer survivor support groups at White Memorial Medical Center approximately twice per month since at least April 2005. The sessions last approximately one and one-half hours.

14. Claimant's mother testified that her cancer and the constant demands of caring for her son have also caused her to remain depressed. She has been prescribed anti-depressant medications. Whereas earlier she had attended weekly therapy sessions for her depression, she now attends a one-hour therapy session with a psychiatrist approximately once per month.

15. Claimant's mother testified that she attends many conferences, seminars and workshops relating to the educational and developmental needs of her son. She produced several flyers for such events, although she did not testify which she attended specifically, or how many such events she attends generally. Most of the events depicted in the flyers were scheduled for times when Claimant was at school. The flyers produced for events in 2006 accounted for approximately one event per month. Claimant's mother has attended such events for several years.

16. Claimant's mother testified that she needs her monthly respite amount to remain at 50 hours per month to be able to continue participating in the above activities.

17. Pursuant to ELARC written policy, the monthly respite amount for Claimant's mother has been reviewed every three months. ELARC staff physician Dr. Lau has conducted those reviews from September 2005 through June 2006.

18. In September 2005, Dr. Lau concluded that Claimant's mother needed 44 hours respite per month, i.e. her baseline amount of 24 hours plus an additional 20 hours for medical and/or mental health appointments. Dr. Lau arrived at the amount of 20 additional hours per month because it appeared to her from the records that Claimant's mother at that time usually had five medical and/or mental health appointments per month and each appointment necessitated four hours of respite. Dr. Lau believed the cancer survivor support group meetings and work-shops were accounted for by the 24 hours of baseline respite, and she also noted that many of those events occurred when Claimant was in school and thus out of his mother's presence. Dr. Lau also questioned the continued value of the workshops, given that Claimant's mother had attended so many for so long.

19. In her June 2006 review, Dr. Lau concluded that the documents provided by Claimant's mother only accounted for one medical and/or mental health appointment per month, based on the remission of her cancer and the decrease of her therapy to one session per month. Using her prior methodology described above, Dr. Lau recommended lowering the monthly respite to 28 hours per month, i.e. the baseline amount of 24 hours plus an additional four hours for one mental health appointment per month.

20. Although Dr. Lau questioned the authenticity of some of the documents provided to the Service Agency by Claimant's mother in support of her request to maintain the same amount of respite, it was not established that any document was not authentic.

#### *Facts Related to the Request for Emergency Respite*

21. On June 16, 2006, Dr. J. Loza diagnosed Claimant's mother with a left hand sprain. He prescribed for her a wrist splint and ibuprofen, and restricted her to light duties with no heavy lifting. A note regarding her left hand/wrist, dated June 26, 2006, from Dr. Silva of the White Memorial Medical Center, is difficult to decipher. Claimant's mother testified that she experienced pain and swelling in that area.

22. Claimant's mother testified that she requested the emergency respite because she needed to rest her injured left wrist area. She was not able to specify the dates on which she needed emergency respite, other than that she needed such respite beginning on June 27, 2006, and lasting another 14 days into the month of July. Claimant's mother testified that she hired Claimant's usual respite provider at her own expense to help her care for Claimant during that time. She was unclear about how many hours per day during that time she needed help. She admitted that during this time she was able to care for herself and attend some workshops.

23. Dr. Lau also conducted a physician's record review of this request. She concluded that the request for emergency respite was not supported, because Claimant's file indicated that his problematic behaviors had been improving, as had his independent living skills, and that the heavy lifting restriction would not affect Claimant's mother's ability to care for her son.

24. Claimant's mother did not establish by a preponderance of the evidence that the medical restrictions regarding her left wrist area affected her ability to care for herself or for Claimant.

25. Claimant's mother did not establish by a preponderance of the evidence her contention that an ELARC Service Coordinator had initially told her the request for emergency respite would be granted if she simply sent medical information to the Service Agency, or had made statements that Claimant's mother reasonably construed as approving the hiring of an emergency respite worker before the Service Agency formally responded to the request.

## LEGAL CONCLUSIONS

### *Jurisdiction & Burdens of Proof*

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>4</sup> An administrative "fair hearing" is available under the Lanterman Act to appeal a regional center's proposed decision regarding provision of services. (§§ 4700-4716.) Claimant properly appealed from the Service Agency's proposed decisions and thus jurisdiction was established. (Factual Findings 1-5.)

2A. When a claimant seeks to establish eligibility for government benefits or services, the burden of proof is on him or her. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

2B. On the other hand, a service agency seeking to change a service previously approved for a claimant has the burden to demonstrate its decision is correct. According to Evidence Code section 500, "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief . . . that he is asserting."

2C. The Service Agency has the burden of proof in case number L2006070496, because it proposes changing an ongoing service, i.e. reducing the amount of respite currently being provided to Claimant's mother. Claimant, however, has the burden of proof in case number L2006070859, because his mother requests reimbursement for a service, 15 days of emergency respite, which the Service Agency has not agreed to fund. (Factual Findings 1-5.)

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<sup>4</sup> All further statutory references are to the Welfare and Institutions Code, unless noted.

2D. The standard of proof in this case requires proof to a preponderance of the evidence, pursuant to Evidence Code section 115, because no other law or statute (including the Lanterman Act) requires otherwise.

*The Amount of Monthly Respite for Claimant's Mother*

3A. Respite is a support service that may be provided and paid for by a regional center. (*Clement v. Amundson* (1998) 60 Cal.App.4th 1094, 1103.) According to section 4690.2, subdivision (a), “[i]n-home respite services” are defined as “intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, . . .” designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client’s safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client’s basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

3B. In this case, the Service Agency met its burden of establishing by a preponderance of the evidence that the respite service provided to Claimant’s mother should be reduced from 50 hours to 28 hours per month. (Factual Findings 6-20.)

3C. The current respite amount of 50 hours per month was approved for Claimant’s mother because she was being treated for cancer and depression and was not able to care for herself or her son. However, the current circumstances no longer support that amount of respite. The cancer is in remission and Claimant’s mother only has one therapy session per month with a psychiatrist for her depression. Dr. Lau persuasively opined that only four additional respite hours per month are needed to accommodate that one appointment per month. It was not established that Claimant’s mother is presently unable to care for herself or her son. It is not apparent that reducing the respite will jeopardize Claimant’s ability to live at home safely or deprive him of basic self-help and daily living activities. Dr. Lau’s opinion was persuasive that the attendance of Claimant’s mother at cancer survivor support group meetings, as well as workshops relative to her son’s education and development, can be accommodated by using the baseline respite amount of 24 hours per month. Many of those events occur when Claimant is in school and would not require the use of respite hours. The remaining baseline hours appear otherwise sufficient to relieve Claimant’s mother from the demands of caring for her son.

3D. The Service Agency did not meet its burden of establishing by a preponderance of the evidence that the monthly respite should be reduced to 24 hours per month. Dr. Lau persuasively opined that Claimant's mother should receive four hours in addition to the baseline amount of 24 hours. (Factual Findings 6-20.)

#### *The Emergency Respite Request*

4A. The Lanterman Act and its accompanying regulations do not specifically address the concept of "emergency respite." Therefore, the provision of the Lanterman Act cited above regarding monthly respite equally applies to this issue.

4B. In this case, Claimant's mother did not meet her burden of establishing by a preponderance of the evidence that she is entitled to reimbursement for any amount of emergency respite in June and July of 2006. Although she did sustain an injury to her left wrist area in June of 2006, it was not established that her injury affected her ability to care for herself or her son. Thus, it was not established that an "emergency" existed at that time that would have justified the need for respite in addition to the 50 hours per month she was then receiving and using. Claimant did not establish that the Service Agency initially approved such a request or otherwise reasonably led Claimant's mother to believe that she had authority from the Service Agency to hire an emergency respite provider. (Factual Findings 6-25.)

#### ORDERS

Claimant Juan C.'s appeals of the EASTERN LOS ANGELES REGIONAL CENTER's proposed decisions are DENIED, except as modified below:

1. The Service Agency may reduce the respite service provided to Claimant's mother to 28 hours per month. (Case No. L2006070496.)

2. Claimant's mother is not entitled to reimbursement from the Service Agency for the cost of emergency respite for 15 days in June and July of 2006. (Case No. L2006070859.)

DATED: September 27, 2006

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ERIC SAWYER,  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

**This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**